1. In the first place it is to be observed that the juncture of circumstances which can alone tolerate the action of the law of self-defence, is by no means as clearly defined—at least in the United States—as the learned justice states it to be. It is true, that on the one hand, we find the rule stated in many cases, that the danger which alone will warrant a person in striking in his defence must be *impending* and about to fall *at the time* the act of defence is resorted to, or, at least, this must be apparent to the comprehension of a reasonable man: *People* v. *Sullivan*, 3 Selden, 396; *Harrison* v. *State*, 24 Ala. 67; *Creek* v. *State*, 24 Ind. 151; *Shorter* v. *People*, 2 Comst. 193; *Logue* v. *Cowe*, 2 Wright, 265; *State* v. *Scott*, 4 Ired. 409; *Dyson* v. *State*, 26 Miss. 362; *Cotton* v. *State*, 31 Miss. 504; *Wesley* v. *State*, 37 Miss. 327; *Evans* v. *State*, 44 Miss. 762; *Head* v. *State*, 44 Miss. 731; *Rippy* v. *State*, 2 Head, 217; *Williams* v. *State*, 3 Heiskell, 376: *Lander* v. *State*, 12 Tex. 462. These cases state the general rule, and the application of it is, of course, in criminal trials, left to the jury. So, it has been said, that the *right of attack for the purpose of defence* does not arise until the person defending has done everything in his power to avoid its necessity. *People* v. *Sullivan*, *supra*; *State* v. *Shippey*, 10 Minn. 223. On the other hand, the doctrine of these last two cases is distinctly repudiated in three cases in Kentucky, where it is held that a person who has once escaped from assassination at the hands of a desparate and persevering enemy, may kill such enemy whenever and wherever he may chance to meet him, so long as such enemy gives evidence that his murderous purpose continues: *Phillips* v. *Com.* 2 Duvall, 328: *Carico* v. *Com.* 7 Bush. 124; *Bohannon* v. *Com.* 8 Bush, 481. And in three other well considered judgments, it has been declared that no general rule on the subject applicable to all cases can be laid down, but that each case must depend to a great extent upon its own exingencies: *Cotton* v. *State*, *supra*; *Patterson* v. *People*, 18 Mich, 330, 334; *Jackson* v. *State*, Supreme Court Term, 1873.

2. If no settled rule can be laid down in advance which shall determine the exingencies in which a person will be permitted to strike in his private defence, the attempt to apply to a state of private or mixed war the rules which are supposed to be settled in regard to private defence, must be entirely fallacious. Thus, in a state of civil society, we say, as was said by Mr. Justice Cowen in the case we are considering, that the right to strike in one's defence does not arise when the threatened danger exists *in machination* only; because, at this stage of the danger, it is always possible to appeal to the preventive arm of the law. But a state of war, be it public, private or mixed, brings with it an accumulation of mischief which the civil law is utterly powerless to prevent; and hence, in such cases the defender must be supposed to be remitted to a state of nature in respect of his right of defence: and in a state of nature, where there is no law to which the defender can appeal for prevention, it cannot be possible that he is obliged to sit passively and watch his enemy while he compasses his destruction, instead of attacking that enemy during his work of preparation. The principle laid down by Dr. Rutherforth, as applicable to *defence of life* in a state of nature, would seem to be the reasonable and consistent rule to apply to such cases. He says: "The law [*i.e.*, the law of nature] cannot be supposed to oblige a man to expose his life to such dangers as may be guarded against, and to wait till the danger is just coming upon him, before it allows him to secure himself." But he shows that in a state of civil society he is obliged first to appeal to the civil magistrate before he can lawfully strike in defence against a mischief which is only in preparation: Ruth, Inst. b. 1, chap. 16, § 5.

The principles insisted on by Mr. Justice Cowen would have required Col. McNabb to attack the Caroline in his open boats in the middle of the Niagara river, or while moored under the guns of Navy Island, and to capture her, if at all, at a useless expenditure of the lives of his men; and this to satisfy a punctilious rule of supposed law, devised by some casuist in his library!

CRITICISMS ON TEXT-WRITERS, REPORTERS, AND OTHER LEGAL AUTHORITIES.

We now furnish our last instalment of judicial observations and comments on the merits and demerits of reporters and text-writers. We hope yet to see a treatise—the product of some able lawyer's learned leisure—which shall form a dictionary of reference to the works on English law and indicate their respective value and importance. Meanwhile we throw another stone upon the pile of materials which must be accumulated by many hands before such a volume is possible.